



House of Representatives

General Assembly

File No. 525

January Session, 2009

Substitute House Bill No. 6668

House of Representatives, April 6, 2009

The Committee on Human Services reported through REP. WALKER of the 93rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROVIDING QUALITY CARE, FINANCIAL OVERSIGHT AND NURSING HOME FUNDING REFORM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-337 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2009*):

3 (a) There shall be established a Long-Term Care Planning
4 Committee for the purpose of exchanging information on long-term
5 care issues, coordinating policy development and establishing a long-
6 term care plan for all persons in need of long-term care. Such policy
7 and plan shall provide that individuals with long-term care needs have
8 the option to choose and receive long-term care and support in the
9 least restrictive, appropriate setting. Such plan shall integrate the three
10 components of a long-term care system including home and
11 community-based services, supportive housing arrangements and
12 nursing facilities. Such plan shall include: (1) A vision and mission
13 statement for a long-term care system; (2) the current number of
14 persons receiving services; (3) demographic data concerning such

15 persons by service type; (4) the current aggregate cost of such system
16 of services; (5) forecasts of future demand for services; (6) the type of
17 services available and the amount of funds necessary to meet the
18 demand; (7) projected costs for programs associated with such system;
19 (8) strategies to promote the partnership for long-term care program;
20 (9) resources necessary to accomplish goals for the future; (10) funding
21 sources available; and (11) the number and types of providers needed
22 to deliver services. The plan shall address how changes in one
23 component of such long-term care system impact other components of
24 such system.

25 (b) The Long-Term Care Planning Committee shall, within available
26 appropriations, study issues relative to long-term care including, but
27 not limited to, the case-mix system of Medicaid reimbursement,
28 community-based service options, access to long-term care and
29 geriatric psychiatric services. The committee shall evaluate issues
30 relative to long-term care in light of the United States Supreme Court
31 decision, *Olmstead v. L.C.*, 119 S. Ct. 2176 (1999), requiring states to
32 place persons with disabilities in community settings rather than in
33 institutions when such placement is appropriate, the transfer to a less
34 restrictive setting is not opposed by such persons and such placement
35 can be reasonably accommodated.

36 (c) The Long-Term Care Planning Committee shall consist of: (1)
37 The chairpersons and ranking members of the joint standing and select
38 committees of the General Assembly having cognizance of matters
39 relating to human services, public health, elderly services and
40 long-term care; (2) the Commissioner of Social Services, or the
41 commissioner's designee; (3) one member of the Office of Policy and
42 Management appointed by the Secretary of the Office of Policy and
43 Management; (4) one member from the Department of Social Services
44 appointed by the Commissioner of Social Services; (5) one member
45 from the Department of Public Health appointed by the Commissioner
46 of Public Health; (6) one member from the Department of Economic
47 and Community Development appointed by the Commissioner of
48 Economic and Community Development; (7) one member from the

49 Office of Health Care Access appointed by the Commissioner of
50 Health Care Access; (8) one member from the Department of
51 Developmental Services appointed by the Commissioner of
52 Developmental Services; (9) one member from the Department of
53 Mental Health and Addiction Services appointed by the Commissioner
54 of Mental Health and Addiction Services; (10) one member from the
55 Department of Transportation appointed by the Commissioner of
56 Transportation; (11) one member from the Department of Children and
57 Families appointed by the Commissioner of Children and Families;
58 and (12) the executive director of the Office of Protection and
59 Advocacy for Persons with Disabilities or the executive director's
60 designee. The committee shall convene no later than ninety days after
61 June 4, 1998. Any vacancy shall be filled by the appointing authority.
62 The chairperson shall be elected from among the members of the
63 committee. The committee shall seek the advice and participation of
64 any person, organization or state or federal agency it deems necessary
65 to carry out the provisions of this section.

66 (d) Not later than January 1, 1999, and every three years thereafter,
67 the Long-Term Care Planning Committee shall submit a long-term
68 care plan pursuant to subsection (a) of this section to the joint standing
69 and select committees of the General Assembly having cognizance of
70 matters relating to human services, public health, elderly services and
71 long-term care, in accordance with the provisions of section 11-4a, and
72 such plan shall serve as a guide for the actions of state agencies in
73 developing and modifying programs that serve persons in need of
74 long-term care.

75 (e) Not later than January 1, 2010, the Long-Term Care Planning
76 Committee shall submit a plan, in accordance with the provisions of
77 section 11-4a, to implement the recommendations of the Ad Hoc Task
78 Force on Nursing Home Costs in Connecticut, as stated in its final
79 report dated February 15, 2002, to the joint standing committees of the
80 General Assembly having cognizance of matters relating to human
81 services and public health and to the select committee of the General
82 Assembly having cognizance of matters relating to aging. Such plan

83 shall describe the measures to be implemented by July 1, 2010, to: (1)
84 Require preadmission screening of all potential nursing home
85 admissions to be conducted by trained professionals independent of
86 the nursing home to ensure that individuals with certain psychiatric
87 disabilities or a history of physical or sexual abuse are not
88 inappropriately admitted to a nursing home; (2) require nursing homes
89 to meet or exceed the minimum staffing standards recommended by
90 the National Citizens' Coalition for Nursing Home Reform; (3) ensure
91 that the standards for the quality of care in nursing homes is
92 determined by the Department of Public Health based on the best
93 available clinical evidence and not on the basis of cost; (4) require that,
94 under the Medicaid rate system, direct care costs and indirect care
95 costs are reimbursed at a rate of ninety-five per cent of actual costs; (5)
96 ensure that facility maintenance costs are considered indirect care costs
97 under the Medicaid rate system; (6) provide nursing homes in which
98 Medicaid patients account for more than ninety per cent of patient
99 days with supplemental disproportionate share payments equal to five
100 per cent of the nursing home's allowable costs, excluding property and
101 capital costs; (7) strengthen the Department of Social Services' audit
102 capabilities so that the department can ensure that nursing homes
103 receive reimbursement only for costs that are allowable under
104 Medicaid; and (8) expand training and educational programs,
105 including, but not limited to, higher education programs, to address
106 the shortage of trained health care professionals.

107 [(e)] (f) Any state agency, when developing or modifying any
108 program that, in whole or in part, provides assistance or support to
109 persons with long-term care needs, shall, to the maximum extent
110 feasible, include provisions that support care-giving provided by
111 family members and other informal caregivers and promote consumer-
112 directed care.

113 Sec. 2. (NEW) (*Effective July 1, 2009*) (a) There is established a council
114 to ensure the quality of long-term personal home care that shall be
115 known as the Personal Care Attendant Quality Home Care Workforce
116 Council. The council shall be composed of thirteen members including

117 the Commissioner of Social Services or the commissioner's designee,
118 who shall serve as chairperson, the Commissioner of Developmental
119 Services or the commissioner's designee, and the Healthcare Advocate
120 or the Healthcare Advocate's designee. The remaining ten members of
121 the council shall be consumers, surrogates or advocates, as defined in
122 subsection (b) of this section, and shall be appointed as follows: Two
123 each by the Governor, the speaker of the House of Representatives and
124 the president pro tempore of the Senate, one each by the majority
125 leader of the House of Representatives, the majority leader of the
126 Senate, the minority leader of the House of Representatives, and the
127 minority leader of the Senate. All appointments to the council shall be
128 made not later than August 15, 2009. The chairperson shall convene
129 the first meeting of the council not later than September 15, 2009.
130 Subsequent meetings shall be held at times determined by the council
131 chairperson or upon the written request of any five members of the
132 council to the chairperson. Members shall serve three-year terms from
133 the date of their appointment and until successors are appointed. A
134 majority of the council shall constitute a quorum for the transaction of
135 any business. Vacancies shall be filled for the expiration of the term of
136 the member being replaced in the same manner as original
137 appointments. Members of the council shall not receive compensation
138 for their service on the council but shall be reimbursed for actual
139 expenses necessarily incurred in performance of their duties on the
140 council.

141 (b) For purposes of this section, (1) "consumer" means a person who
142 receives services from a personal care attendant under a state-funded
143 program, including, but not limited to, (A) the program for individuals
144 with acquired brain injuries established pursuant to section 17b-260a
145 of the general statutes, (B) the personal care assistance program,
146 established pursuant to section 17b-605a of the general statutes, (C) the
147 Connecticut home care program for the elderly, established pursuant
148 to section 17b-342 of the general statutes, (D) the pilot program to
149 provide home care services for disabled persons, established pursuant
150 to section 17b-617 of the general statutes, (E) the individual and family
151 support waiver program, administered by the Department of

152 Developmental Services, and (F) the comprehensive waiver program,
153 administered by the Department of Developmental Services; (2)
154 "surrogate" means a consumer's legal guardian or a person identified
155 in a written agreement as having responsibility for the care of a
156 consumer; (3) "advocate" means a person employed by, or affiliated
157 with, an organization that advocates on behalf of senior citizens or
158 persons with disabilities; and (4) "personal care attendant" means a
159 person employed by a consumer or surrogate to provide personal care
160 services to a consumer.

161 (c) The council shall have the following duties and responsibilities:
162 (1) To undertake recruiting efforts of personal care attendants and to
163 act as an employer of personal care attendants in accordance with
164 section 3 of this act; (2) to provide training, education and certification
165 recommendations and opportunities for personal care attendants; (3)
166 to provide routine, emergency and respite referrals of personal care
167 attendants to consumers and surrogates; and (4) to maintain an
168 accurate list, that shall first be developed by the Commissioners of
169 Social Services and Developmental Services, (A) identifying personal
170 care attendants who have been paid through state-funded programs,
171 including, but not limited to, those programs identified in subsection
172 (b) of this section, and (B) listing the training, education and
173 certification of each such attendant, but not providing the personal
174 care attendant's address, identifying a consumer's name or identifying
175 any family relationship between the consumer and the personal care
176 attendant. The council shall have the authority to take the actions
177 described in section 4 of this act.

178 (d) A consumer or surrogate, who is referred a personal care
179 attendant by the council, shall have the right to (1) hire or refuse to
180 hire, (2) supervise, (3) direct the activities of, and (4) terminate the
181 employment of any such personal care attendant. A consumer or
182 surrogate may hire a personal care attendant who has not been
183 referred by the council.

184 Sec. 3. (NEW) (*Effective July 1, 2009*) (a) A personal care attendant

185 shall be a state employee, as defined in subsection (b) of section 5-270
186 of the general statutes only for the purposes of collective bargaining
187 pursuant to sections 5-270 to 5-280, inclusive, of the general statutes
188 and not for any other purpose. Sections 5-270 to 5-280, inclusive, of the
189 general statutes shall apply to personal care attendants except as
190 provided in this section. For purposes of this section, "personal care
191 attendant" has the same meaning as provided in section 2 of this act.

192 (b) As the employer of personal care attendants for purposes of
193 collective bargaining, the Personal Care Attendant Quality Home Care
194 Workforce Council established under section 2 of this act shall have
195 the authority and obligation to bargain and enter into agreements with
196 a representative of personal care attendants that has been designated
197 by the State Board of Labor Relations, pursuant to section 5-275 of the
198 general statutes, as the exclusive bargaining agent of such attendants
199 to establish wages, benefits and other terms and conditions of
200 employment for such attendants. Notwithstanding the provisions of
201 this subsection, consumers and surrogates shall have the rights
202 described in subsection (d) of section 2 of this act.

203 (c) The council and the bargaining agent of such attendants may
204 participate in the elective binding arbitration procedures as provided
205 in section 5-276a of the general statutes. The factors to be considered
206 by the arbitrator in arriving at a decision on the issues submitted by
207 the council and the bargaining agent shall include: (1) The factors
208 described in subdivision (5) of subsection (e) of section 5-276a of the
209 general statutes; (2) the nature of the personal care services programs
210 at issue; and (3) the needs and welfare of consumers, including
211 recruitment, retention and quality needs with respect to the personal
212 care attendant workforce. Notwithstanding the provisions of
213 subdivision (6) of subsection (e) of section 5-276a of the general
214 statutes, the award of the arbitrator shall not be final and binding upon
215 the council or designated representative of such attendants but shall be
216 a recommended resolution for unresolved issues that the council and
217 designated representative of such attendants may incorporate into
218 their collective bargaining agreement.

219 (d) Personal care attendants shall not be considered employees of
220 the council or the state for any purpose except for the purpose of
221 collective bargaining, pursuant to sections 5-270 to 5-280, inclusive, of
222 the general statutes. The provisions of this section shall not alter the
223 obligations of the state or the consumer to provide the state's or the
224 consumer's share of Social Security, federal and state unemployment
225 taxes, Medicare and workers' compensation insurance under the
226 Federal Insurance Contributions Act, federal and state unemployment
227 law or the Connecticut Workers' Compensation Act.

228 (e) Consistent with the provisions of section 5-279 of the general
229 statutes, no provision of this section shall grant personal care
230 attendants a right to strike and such strikes are prohibited.

231 (f) The only bargaining unit appropriate for the purpose of
232 collective bargaining between the council and a representative of
233 personal care attendants, as provided in this section, shall be a state-
234 wide unit of all personal care attendants. Personal care attendants who
235 are members of the consumer's or surrogate's family shall not be
236 excluded from the bargaining unit for the reason of the family
237 relationship.

238 (g) The council or its contractors shall not be held vicariously liable
239 for the action or inaction of any personal care attendant, whether or
240 not such personal care attendant was included on the council's referral
241 directory or referred to a consumer or a surrogate.

242 (h) The members of the council shall be immune from any liability
243 resulting from implementation of sections 2 to 4, inclusive, of this act.

244 Sec. 4. (NEW) (*Effective July 1, 2009*) (a) The Personal Care Attendant
245 Quality Home Care Workforce Council established under section 2 of
246 this act may make and execute contracts and all other instruments
247 necessary or convenient for the performance of the council's duties or
248 exercise of its powers, including contracts with public and private
249 agencies, organizations, corporations and individuals for services.

250 (b) The council may adopt regulations, in accordance with chapter
251 54 of the general statutes, to carry out the provisions of sections 2 to 4,
252 inclusive, of this act.

253 (c) The council may, within available appropriations, establish
254 offices, employ and discharge employees, agents and contractors as
255 necessary and prescribe their duties and powers and fix their
256 compensation, incur expenses and create liabilities as are reasonable
257 and proper for the administration of sections 2 to 4, inclusive, of this
258 act.

259 (d) The council may seek and accept any grant of money, services or
260 property from the federal government, the state, a political subdivision
261 or an agency of such governmental entities, including, but not limited
262 to, federal matching funds under Title XIX of the Social Security Act,
263 and may do all things necessary to make an application for any such
264 grant.

265 (e) The council may coordinate its activities and cooperate with
266 similar agencies in other states.

267 (f) The council may establish technical advisory committees to assist
268 the council.

269 (g) The council may keep records and engage in research and the
270 gathering of relevant statistics.

271 (h) The council may acquire, hold or dispose of real or personal
272 property, or any interest in such property, and construct, lease or
273 otherwise provide facilities for the activities conducted under sections
274 2 to 4, inclusive, of this act but the council may not exercise any power
275 of eminent domain.

276 (i) The council may delegate to the appropriate persons the power
277 to execute contracts and other instruments on its behalf and delegate
278 any of its powers and duties if such delegation is consistent with the
279 purposes of sections 2 to 4, inclusive, of this act.

280 (j) The council may perform any acts necessary or convenient to
 281 execute the powers granted to it in sections 2 to 4, inclusive, of this act.

282 Sec. 5. (NEW) (*Effective July 1, 2009*) (a) The Department of Social
 283 Services, the Department of Developmental Services, other state
 284 agencies, members of the Personal Care Attendant Quality Home Care
 285 Workforce Council, consumers, surrogates, contractors, agents of the
 286 state and fiscal intermediaries shall cooperate in the implementation of
 287 sections 2 to 4, inclusive, of this act and with any agreements reached
 288 by the Personal Care Attendant Quality Home Care Workforce Council
 289 and a representative of personal care attendants that has been
 290 designated by the State Board of Labor Relations, pursuant to section
 291 5-275 of the general statutes, as the exclusive bargaining agent of such
 292 attendants. Such obligation to cooperate shall include making required
 293 payroll deductions as authorized by the collective bargaining
 294 agreement.

295 (b) The Commissioner of Social Services shall submit an application
 296 for a waiver of federal law as is necessary to effectuate the provisions
 297 of sections 2 to 4, inclusive, of this act, in accordance with section 17b-8
 298 of the general statutes. The Commissioner of Social Services, the
 299 Commissioner of Developmental Services and other state agencies
 300 shall take all actions reasonably necessary to obtain approval for any
 301 such waiver and to ensure the continuation of necessary federal
 302 funding.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	17b-337
Sec. 2	<i>July 1, 2009</i>	New section
Sec. 3	<i>July 1, 2009</i>	New section
Sec. 4	<i>July 1, 2009</i>	New section
Sec. 5	<i>July 1, 2009</i>	New section

HS *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: See below

Municipal Impact: None

Explanation

This bill requires the Long-Term Care Planning Committee to submit a plan, by January 1, 2010, to the General Assembly concerning changes to the long term care system. The development of this will result in minimal administrative costs to the agencies involved with the Committee.

Sections 2 through 5 of the bill establish a Personal Care Attendant (PCA) Quality Care Workforce Council. It makes PCA's employees of the Council for purposes of collective bargaining.

The agencies involved with this Council will incur administrative costs related to their participation. Given the scope of duties of this Council, it is likely that these administrative costs will be significant. The bill allows the Council to enter into contracts, establish offices, hire employees and perform other administrative functions, within available appropriations. The FY 10-11 biennial budget (as approved by the General Assembly) contains no appropriation for the Council. It is therefore unclear what duties the Council would be able to execute.

The bill further specifies that members of the council will be reimbursed for actual expenses incurred in the performance of their duties. It is unclear what state agency would reimburse those members of the Council who are not state employees.

The bill specifies that the state agencies appointed to the Council shall cooperate with the implementation of the Council. As it is

unclear whether such cooperation would extend to the funding of Council activities, the fiscal impact of this cannot be known.

The bill requires, only for the purposes of collective bargaining, that a PCA be considered a state employee and subject to state employee collective bargaining laws, and that the Council be considered the PCA's employer. The fiscal impact would depend on the outcome of collective bargaining negotiations. However, to the extent that collective bargaining increases the cost of PCA services, the Department of Social Services (DSS) may incur additional costs under the PCA waiver and pilot programs under the Medicaid and Connecticut Home Care programs.

The bill further requires DSS to seek any federal waivers as necessary to implement these provisions. As the bill does not require the inclusion of PCA services as part of the state Medicaid plan, it is assumed that DSS will not have to seek a waiver.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6668*****AN ACT PROVIDING QUALITY CARE, FINANCIAL OVERSIGHT
AND NURSING HOME FUNDING REFORM.*****SUMMARY:**

This bill requires the Long-Term Care Planning Committee (LTCPC) to submit a plan to the Human Services, Public Health, and Aging committees by January 1, 2010 to implement the recommendations in the February 15, 2002 final report of the Ad Hoc Task Force on Nursing Home Costs in Connecticut.

The bill also establishes a Personal Care Attendant (PCA) Quality Home Care Workforce Council (council) to ensure the quality of long-term personal care. It allows the council and PCAs paid through state programs to engage in collective bargaining.

EFFECTIVE DATE: July 1, 2009

**§ 1 — LONG-TERM CARE PLANNING COMMITTEE PLAN
CONTENTS**

The LTCPC's plan must describe measures to implement the following recommendations by July 1, 2010:

1. require pre-admission screening of all potential nursing home residents conducted by independent, trained professionals to prevent the inappropriate admission of individuals with psychiatric disabilities or histories of physical or sexual abuse;
2. require nursing homes to meet or exceed national Citizens' Coalition for Nursing Home Reform's (NCCNHR) recommended minimum staffing standards (4.13 direct care nursing hours per resident per day. See BACKGROUND);

3. ensure that the Department of Public Health (DPH) nursing home quality of care standards are evidenced-based and not cost-based;
4. require the direct care and indirect care cost components of the state's Medicaid nursing home rate setting formula to be reimbursed at 95% of actual costs and that facility maintenance costs are considered indirect care costs;
5. provide nursing homes where more than 90% of their patients receive Medicaid with supplemental disproportionate share payments of five percent of the home's allowable costs, excluding property and capital costs;
6. strengthen the Department of Social Services' (DSS) audit capabilities so it ensures nursing homes are only reimbursed for allowable Medicaid costs; and
7. expand training and educational programs, including higher education programs, to address the shortage of trained healthcare professionals.

§§ 2& 4 — PCA QUALITY HOME CARE WORKFORCE COUNCIL

Definitions

Under the bill, the following definitions apply:

1. "consumer" means a person who receives PCA services under state programs, including: (a) the Acquired Brain Injury (ABI) Medicaid waiver program, (b) the PCA Medicaid waiver program for disabled adults, (c) the Connecticut Homecare Program for the Elderly (CHCPE), (d) the state-funded Connecticut Homecare Program for Disabled Adults (CHCPDA) pilot program, and (e) the Department of Developmental Services (DDS)-administered individual and family support waiver and comprehensive waiver programs;
2. "surrogate" means a consumer's legal guardian or person

identified in a written agreement as responsible for the consumer's care;

3. "advocate" means a person employed by, or affiliated with, an organization that advocates on behalf of seniors or individuals with disabilities; and
4. "personal care attendant" means a person employed by a consumer or surrogate to provide personal care services to a consumer.

Membership

The council consists of 13 members and is chaired by the DSS commissioner or his designee. Ten of the members must be consumers, surrogates, or advocates and are appointed as follows: the governor, Senate president pro tempore, and House speaker each nominate two, and the majority and minority leaders of the House and Senate each nominate one. Additional members include the DDS commissioner and the Healthcare Advocate or their designees. All council appointments must be made by August 15, 2009.

Under the bill, members must serve three-year terms and until a successor is appointed. The original appointing authority must fill vacancies for the expiration of the term of the member being replaced. Members are not compensated for their service but are reimbursed, within available appropriations, for expenses incurred while performing their duties.

The DSS commissioner must call the council's first meeting by September 15, 2009. Additional meetings must be held (1) at times determined by the commissioner or (2) when any five council members submit a written request to the commissioner. A majority of the council constitutes a quorum for the purposes of conducting council business.

Duties and Responsibilities

The bill requires the council to:

1. undertake PCA recruiting efforts and act as an employer of PCAs for collective bargaining purposes;
2. provide training, education, and certification recommendations for PCAs,
3. provide routine, emergency, and respite PCA referrals to consumers and surrogates, and
4. maintain an accurate referral list first developed by the DSS and DDS commissioners that (a) identifies PCAs who have been paid through state-funded programs and (b) lists the training, education, and certification of PCAs.

The bill prohibits the referral list from providing the PCA's address or identifying (1) the consumer's name or (2) any family relationship between the consumer and the PCA.

The bill allows the council to take the following actions:

1. make or enter into contracts or other necessary or convenient instruments to carry out its powers and duties, including contracts with public and private agencies, organizations, corporations, and individuals for services;
2. adopt regulations to carry out the bill;
3. within available appropriations, employ, discharge, set compensation for, and prescribe the powers and duties of necessary staff, agents, and contractors;
4. within available appropriations, establish offices, incur expenses, and create reasonable and proper liabilities to carry out the bill;
5. take all necessary actions to seek and accept grants for funds, services, or property from federal and state sources, including federal Medicaid matching funds;
6. coordinate activities and cooperate with similar agencies in other

states;

7. establish a technical advisory committee to assist the council;
8. keep records, conduct research, and gather relevant statistics;
9. acquire, hold, or dispose of real or personal property or any interest in the property, and construct, lease, or otherwise provide facilities for council activities, except that it cannot exercise any power of eminent domain;
10. delegate to the appropriate people the power to execute contracts and other instruments on its behalf and delegate any of its powers and duties if consistent with carrying out the bill; and
11. perform any necessary or convenient acts to execute its powers.

Consumer and Surrogate Rights

The bill grants a consumer or surrogate who receives a PCA referral from the council the specific right to hire, refuse to hire, supervise, fire, and direct the activities of a PCA. It also specifies that a consumer or surrogate may hire a PCA not referred by the council.

§ 3 — COLLECTIVE BARGAINING

The bill requires, only for the purposes of collective bargaining, that (1) a PCA be considered a state employee and subject to state employee collective bargaining laws and (2) the council be considered the PCA's employer.

The bill specifies that this does not alter the state's or consumer's obligation to provide their portion of any Social Security, federal and state unemployment taxes, Medicare and worker's compensation insurance under the Federal Insurance Contributions Act, federal and state unemployment law, or the Connecticut Workers' Compensation Act.

PCA Representative

Under the bill, the council has the authority and obligation to

bargain and enter into agreements with a PCA representative. This representative must be designated by the State Board of Labor Relations as the PCA's exclusive bargaining agent to negotiate for wages, benefits, and other employment terms and conditions.

Notwithstanding this, the bill specifies that consumers and surrogates have the rights described in the previous section.

Bargaining Units

Under the bill, a statewide unit of all PCAs is the only bargaining unit allowed between the council and a PCA representative. The bill prohibits the exclusion of PCAs who are family members of a consumer or surrogate from the bargaining unit because of the family relationship.

Elective Arbitration

The bill allows the council and the PCA's bargaining agent to participate in elective arbitration. It requires the arbitrator to consider the following factors when making a decision:

1. the history of negotiations between the parties, including those leading to the arbitration;
2. existing employment conditions of similar groups of employees;
3. prevailing labor market wages, fringe benefits, and working conditions;
4. overall compensation paid to employees involved in the arbitration, including direct wages, overtime and premium pay, leave time, insurance, pensions, medical and hospitalization benefits, food and apparel, and all other benefits received;
5. the employer's ability to pay;
6. cost of living changes;
7. the employees' interests and welfare;

8. the nature of the PCA programs at issue; and
9. the consumers' needs and welfare, including PCA workforce recruitment, retention, and quality.

Notwithstanding the state's elective binding arbitration law, the bill prohibits an arbitrator's award from being final and binding upon the council or PCA bargaining agent. It must be considered a recommended resolution the council and bargaining agent may incorporate into their collective bargaining agreement.

Strikes

The bill prohibits PCAs that have the right to collectively bargain from participating in any strike.

Liability

The bill prohibits the council or its contractors from being held vicariously liable for a PCA's action or inaction, regardless of whether the PCA was listed on the council's referral directory or referred to a consumer or surrogate. It also grants council members immunity from any liability resulting from the bill's implementation.

Implementation

The bill requires DSS, DDS, other state agencies, council members, consumers, surrogates, contractors, state agents, and fiscal intermediaries to cooperate to implement (1) the bill and (2) any agreements reached by the council and PCA bargaining agent, including making required payroll deductions authorized by the collective bargaining agreement.

It also requires the DSS commissioner to submit any federal waiver applications necessary to carry out the bill. And it requires the DDS and DSS commissioners and other state agencies to take all reasonably necessary actions to obtain federal waiver approval and ensure continued federal funding.

BACKGROUND

Ad Hoc Task Force on Nursing Home Costs in Connecticut

The legislature created the task force in 2001 to investigate whether the state's Medicaid nursing home rates appropriately reflected actual costs, including wages, benefits, staffing, and collectively bargained wages and benefits. In 2002, the task force submitted its final report to the Appropriations, Human Services, Public Health, and Labor committees.

National Citizen's Coalition for Nursing Home Reform Staffing Recommendations

NCCNHR is a national consumer advocacy organization that has lobbied for increased direct care staffing levels in nursing homes for several years. Its recommended minimum staffing standards were adopted by its membership in 1998 and developed in consultation with long-term care experts over a period of years. These "NCCNHR Staffing Standards" require a minimum of 4.13 direct nursing care hours per resident per day distributed as follows:

Minimum Level Direct Care Staff (registered nurse (RN), licensed vocational nurse (LVN)/licensed practical nurse (LPN), or certified nurse assistant (CAN))	
Day Shift	1 FTE for each 5 residents (1.60 hours per resident day)
Evening Shift	1 FTE for each 10 residents (0.80 hours per resident per day)
Night Shift	1 FTE for each 15 residents (0.53 hours per day)
Minimum Licensed Nurses (RN and LVN/LPNs) providing direct care, treatments and medications, planning, coordination, and supervision at the unit level	
Day Shift	1 FTE for each 15 residents (0.53 hours per resident day)
Evening Shift	1 FTE for each 20 residents (0.40) hours per resident per day)
Night Shift	1 FTE for each 30 residents (0.27) hours per day)
TOTAL DIRECT CARE NURSING HOURS	4.13 per resident per day

PCA Services

PCAs provide non-medical care, such as assistance with bathing, dressing, eating, walking, toileting, or transfer from a bed to a chair.

DSS currently offers PCA services under the following Medicaid Home and Community Based Service waiver programs: the CHCPE's PCA Pilot program, the Acquired Brain Injury program, and the PCA Waiver program for disabled adults. DDS offers PCA services under its individual and family support waiver and comprehensive waiver programs.

Under these programs, participants hire their own assistants to help with personal care and activities of daily living, instead of going through a home health care agency. The participant hires and manages the assistant, but a financial intermediary handles the paperwork.

Related Bills

SB 454, favorably reported by the Aging and Public Health committees, phases in minimum direct care staffing standards over three years starting October 1, 2011.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute

Yea 13 Nay 6 (03/19/2009)